



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1430

Introduced 2/18/2009, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

| | |
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| 755 ILCS 5/11-5 | from Ch. 110 1/2, par. 11-5 |
| 755 ILCS 5/11-7 | from Ch. 110 1/2, par. 11-7 |
| 755 ILCS 5/11-14.1 | from Ch. 110 1/2, par. 11-14.1 |

Amends the Probate Act of 1975. Provides that the court lacks jurisdiction to proceed on a petition for the appointment of a guardian of a minor if the minor has a living fit parent (instead of living parent), adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to make and carry out day-to-day child care decisions concerning the minor. Provides that with regard to a parental right to custody, fitness of the parent shall be determined as of the time of the filing of the petition to establish the guardianship. Provides that in determining fitness, the court may consider those grounds set forth in the Adoption Act as grounds for unfitness. Provides that if a parent is found to be unfit, as of the date of filing a petition, he or she shall not automatically be entitled to custody or to terminate a guardianship, even upon the removal of the disability, but shall be required to satisfy the provisions of the Act. Provides that other than a guardianship terminating because the minor reaches the age of majority, a guardianship shall not be terminated by a court unless the court finds, based upon clear and convincing evidence, that there has been a material change in circumstances since the guardianship was created and that termination is in the minor's best interest considering: the integration of the minor into the guardian's family; the effect that removal of the minor from the guardian's care would have on the minor; the minor's relationship with the proposed care giver or parent; the relative economic abilities and physical and emotional abilities of the parties to provide for the minor's needs; and the minor's environment with the guardian compared to the proposed environment.

LRB096 04815 AJO 14879 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Sections 11-5, 11-7, and 11-14.1 as follows:

6 (755 ILCS 5/11-5) (from Ch. 110 1/2, par. 11-5)

7 Sec. 11-5. Appointment of guardian.

8 (a) Upon the filing of a petition for the appointment of a
9 guardian or on its own motion, the court may appoint a guardian
10 of the estate or of both the person and estate, of a minor, or
11 may appoint a guardian of the person only of a minor or minors,
12 as the court finds to be in the best interest of the minor or
13 minors.

14 (a-1) A parent, adoptive parent or adjudicated parent,
15 whose parental rights have not been terminated, may designate
16 in any writing, including a will, a person qualified to act
17 under Section 11-3 to be appointed as guardian of the person or
18 estate, or both, of an unmarried minor or of a child likely to
19 be born. A parent, adoptive parent or adjudicated parent, whose
20 parental rights have not been terminated, or a guardian or a
21 standby guardian of an unmarried minor or of a child likely to
22 be born may designate in any writing, including a will, a
23 person qualified to act under Section 11-3 to be appointed as

1 successor guardian of the minor's person or estate, or both.
2 The designation must be witnessed by 2 or more credible
3 witnesses at least 18 years of age, neither of whom is the
4 person designated as the guardian. The designation may be
5 proved by any competent evidence. If the designation is
6 executed and attested in the same manner as a will, it shall
7 have prima facie validity. The designation of a guardian or
8 successor guardian does not affect the rights of the other
9 parent in the minor.

10 (b) The court lacks jurisdiction to proceed on a petition
11 for the appointment of a guardian of a minor if (i) the minor
12 has a living fit parent, adoptive parent or adjudicated parent,
13 whose parental rights have not been terminated, whose
14 whereabouts are known, and who is willing and able to make and
15 carry out day-to-day child care decisions concerning the minor,
16 unless the parent or parents consent to the appointment or,
17 after receiving notice of the hearing under Section 11-10.1,
18 fail to object to the appointment at the hearing on the
19 petition or (ii) there is a guardian for the minor appointed by
20 a court of competent jurisdiction. There shall be a rebuttable
21 presumption that a parent of a minor is willing and able to
22 make and carry out day-to-day child care decisions concerning
23 the minor, but the presumption may be rebutted by a
24 preponderance of the evidence.

25 (b-1) If the court finds the appointment of a guardian of
26 the minor to be in the best interest of the minor, and if a

1 standby guardian has previously been appointed for the minor
2 under Section 11-5.3, the court shall appoint the standby
3 guardian as the guardian of the person or estate, or both, of
4 the minor unless the court finds, upon good cause shown, that
5 the appointment would no longer be in the best interest of the
6 minor.

7 (c) If the minor is 14 years of age or more, the minor may
8 nominate the guardian of the minor's person and estate, subject
9 to approval of the court. If the minor's nominee is not
10 approved by the court or if, after notice to the minor, the
11 minor fails to nominate a guardian of the minor's person or
12 estate, the court may appoint the guardian without nomination.

13 (d) The court shall not appoint as guardian of the person
14 of the minor any person whom the court has determined had
15 caused or substantially contributed to the minor becoming a
16 neglected or abused minor as defined in the Juvenile Court Act
17 of 1987 unless 2 years have elapsed since the last proven
18 incident of abuse or neglect and the court determines that
19 appointment of such person as guardian is in the best interests
20 of the minor.

21 (e) Previous statements made by the minor relating to any
22 allegations that the minor is an abused or neglected child
23 within the meaning of the Abused and Neglected Child Reporting
24 Act, or an abused or neglected minor within the meaning of the
25 Juvenile Court Act of 1987, shall be admissible in evidence in
26 a hearing concerning appointment of a guardian of the person or

1 estate of the minor. No such statement, however, if
2 uncorroborated and not subject to cross-examination, shall be
3 sufficient in itself to support a finding of abuse or neglect.
4 (Source: P.A. 90-430, eff. 8-16-97; 90-472, eff. 8-17-97;
5 90-796, eff. 12-15-98.)

6 (755 ILCS 5/11-7) (from Ch. 110 1/2, par. 11-7)

7 Sec. 11-7. Parental right to custody.) If both parents of a
8 minor are living and are competent to transact their own
9 business and are fit persons, they are entitled to the custody
10 of the person of the minor and the direction of his education.
11 If one parent is dead and the surviving parent is competent to
12 transact his own business and is a fit person, he is similarly
13 entitled. The parents have equal powers, rights and duties
14 concerning the minor. If the parents live apart, the court for
15 good reason may award the custody and education of the minor to
16 either parent or to some other person.

17 Fitness of the parent shall be determined as of the time of
18 filing the petition to establish the guardianship. In
19 determining fitness, the court may consider those grounds set
20 forth in the Adoption Act as grounds for unfitness. If a parent
21 is found to be unfit, as of the date of filing a petition, he or
22 she shall not automatically be entitled to custody or to
23 terminate a guardianship, even upon the removal of the
24 disability, but shall be required to satisfy the provisions of
25 subsection (b) of Section 14.1 of this Act.

1 (Source: P.A. 79-328.)

2 (755 ILCS 5/11-14.1) (from Ch. 110 1/2, par. 11-14.1)

3 Sec. 11-14.1. Revocation of letters.

4 (a) Upon the minor reaching the age of majority, the
5 letters of office shall be revoked only as to that minor and
6 the guardianship over that minor shall be terminated. The
7 letters of office and the guardianship shall remain as to any
8 other minors included in the same letters of office or
9 guardianship order.

10 (b) Other than as provided in subsection (a), a
11 guardianship of a minor shall not be terminated by a court,
12 unless, upon clear and convincing evidence, the court finds
13 that there has been a material change in circumstances since
14 the entry of the order appointing the guardian and that the
15 termination is in the best interest of the minor, considering,
16 but limited to the following:

17 (1) the extent to which the minor has integrated into
18 the guardian's family;

19 (2) the effect the removal of the minor from the
20 guardian's care would have on the minor;

21 (3) the relationship of the minor to the proposed new
22 care giver or parent;

23 (4) the relative economic abilities of the parties to
24 provide for the minor's needs;

25 (5) the physical and emotional abilities of the parties

1 to provide for the minor's needs; and
2 (6) the environment the minor would be in after
3 termination of the guardianship compared to the minor's
4 current environment with the guardian.

5 (Source: P.A. 90-796, eff. 12-15-98.)